Global Corporate Real Estate Guide - Netherlands

Real Estate Law

| Contents |
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| To generate table of contents, right-click here and select **Update Field.** |

# What is included in the term “real estate”?

The term "real estate" includes the following:

Real properties such as the soil, unmined minerals, plants attached to the soil and buildings and works attached to the soil, either directly or through other buildings or works

Rights in rem that are created in relation to real properties such as ground leases (erfpacht), rights of superficies (opstalrechten) and rights of usufruct (vruchtgebruik)

# What laws govern real estate transactions?

Property law is governed by Dutch private and public law, including tax law, administrative law, leasing law and environmental law.

# What is the land registration system?

The Dutch land registry system protects legal certainty regarding real estate in the Netherlands. Through the land registration system, ownership of all real estate in the Netherlands can be verified. This also applies to rights over real properties.

The land registry provides information regarding real property located in the Netherlands, including the relevant landowner, address, cadastral area and permitted use of the plot. In addition, the land registry lists public law restrictions and rights in rem that may be applicable to the plot.

In principle, one can rely on the information contained in the land registry. The state will be held liable for damages for any mistake committed by land registration authority personnel.

# Which authority manages the registration of titles?

Title registration is usually managed by civil law notaries who execute the deeds of transfer of title of real property or rights over real property.

The land registry itself is kept and managed by the semipublic authorities responsible for the registration of real property and rights over real property.

# What rights over real property are required to be registered?

The following rights over real property require registration:

Ground leases (erfpacht)

Rights of superficies (opstalrecht)

Rights of usufruct (vruchtgebruik)

Rights of mortgage (hypotheek)

Rights of easement (erfdienstbaarheid)

Public authorities such as municipalities, provinces and environmental and water authorities can also publish certain restrictions in relation to real property in the land registry, such as municipal preemption rights.

# What documents can landowners use to prove ownership over real property?

Landownership may be proven using transfer deeds that have been registered with the land registry.

# Can a title search be conducted online?

Yes. Searches can be done by entering the property location details or the name of the owner in the land registry’s online tool. The results will show the owner of the property and the details of the deed of transfer. In addition, any attachments or mortgages will be visible. Furthermore, the underlying deeds can be retrieved online very quickly.

# Can foreigners own real property? Are there nationality restrictions on land ownership?

Yes. Foreigners can own real property and there are no restrictions.

# Can the government expropriate real property?

Yes. Based on the Expropriation Act (Onteigeningswet), which will be incorporated in the new Environment and Planning Act (Omgevingswet, hereinafter referred to as EPA), the local government has the means to start proceedings for expropriation if certain conditions, such as urgency, are met. The government may only proceed with expropriation if it demonstrably serves the public interest.

The expropriation decision must always be ratified by the administrative court and the notary must submit the expropriation deed for registration in the land registry. Please note that a claim for expropriation is not easily awarded because the government has to strictly adhere to all applicable conditions. The landowners facing expropriation are entitled to full compensation of related damages suffered.

# How can real estate be held?

Generally, a real estate interest is held as an asset or through shares.

# What are the usual structures used in investing in real estate?

The following are the usual structures for investing in real estate:

Asset deals

Share deals

# How are real estate transactions usually funded?

Usually, purchasers finance acquisitions with external loans and provide mortgage rights to external lenders.

# Who usually produces the documentation in real estate transactions?

Generally, the civil law notary will prepare a letter of intent, the sale and purchase agreement, the deed of transfer and the deed of mortgage (as applicable). The civil law notary also takes care of the registration of the transfer deed in the land registry. The registration of the transfer deed will complete the transfer.

# Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before the real estate was bought or occupied?

Yes. In general, liabilities carry over to the next owner or occupier. For this reason, thorough due diligence combined with appropriate representations and warranties in the sale and purchase agreement are required so the risks can be mitigated. For instance, in case of environmental claims, the current owner could be liable for the cleanup of soil pollution even if this has occurred before they purchased the property.

# Does a seller or occupier retain any liabilities relating to the real estate after they have disposed of it?

Yes, it is possible. To a certain extent, the risk for a seller can be mitigated through appropriate representations and warranties detailed in the sale and purchase agreement.

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